IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 70 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TAPUBHAI RAGHAVBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PRAVIN GONDALIYA for Petitioner No. 1

MR BY MANKAD APP for Respondent No. 1

MR BJ JADEJA with MR HM JADEja for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 28/08/2001

ORAL JUDGEMENT

1. This Revision Application is filed by the applicant being aggrieved by the order dated 4.10.1999 of the learned Addl. Sessions Judge, Jamnagar, in Criminal Revision Application No.22 of 1999, by which the learned Addl. Sessions Judge, Jamnagar, reversed the order of

the learned Judicial Magistrate, First Class, Kalavad in Criminal Case No. 177/96 passed on 05.01.1999 below Exh. 15 Application for issuing search warrant against the present respondent No.2, an accused in the said Criminal Case, to produce the Tractor before the court as muddamal.

2. Brief facts of the case disclose that the present applicant filed a complaint against the present respondent in the Court of learned Judicial Magistrate, First Class, Kalavad, u/S. 387, 398, 447, 506(2) and read with Sec. 114 of the IPC. The complaint was forwarded by the Magistrate for investigation u/S. 156(3) of the Cr.P.C. The Police submitted a "C" Summary to the complaint and issuing notice to the applicant, applicant filed a reply to the report of "C" Summary and ultimately learned Judicial Magistrate, First Class, Kalavad, vide his order dated 31.3.1998 directed to register the complaint of the complainant - present applicant and issued summons against the present respondent for the offences punishable u/ss. 387 and 506(2) of the IPC in the said Criminal Case No. 177/96. The applicant - original complainant filed an Application at Exh. 15 u/s 93 of the Cr.P.C. to issue search warrant against the accused i.e. present respondent No.2 to produce a tractor along with its appurtures, subject matter of the complaint before the Court. Learned Magistrate was pleased to grant the application and issued a search warrant as per S.93 of the Cr.P.C. and ordered PSI, Kalavad, to seize the tractor in question along with its appurtures. This order of learned Magistrate, which is dated 5.1.1999 was carried by the accused - present respondent in Revision before the learned Addl. Sessions Judge at Jamnagar, being Criminal Revision Application No. 22 of 1999. Learned Addl. Sessions Judge, Jamanagar, came to the conclusion that the Magistrate has no power to issue search warrants u/s 91 of the Cr.P.C. and learned Addl. Sessions Judge relied upon a decision of this Court in the case of KHUSHALDAS vs. STATE OF GUJARAT, reported in Criminal Law Reporter (Gujarat) 94 at page 132. Learned Addl. Sessions Judge also further observed that a purshis vide Exh. 12 of the Revision has been preferred by the accused applicant to the extent that the accused applicant shall produce the Muddamal Tractor before the Court whenever the Court directs so to do, and hence, learned Addl. Sessions Judge set aside the order of learned Judicial Magistrate, First Class, Kalavad, and that order of the Addl. Sessions Judge, Jamanagar, which is dated 4.10.1999, is the subject matter of this Revision Application.

4. Learned Advocate Mr. P.S. Gondalia for the applicant, learned APP Mr. B.Y. Mankad for respondent No.1 State of Gujarat and learned Advocate Mr. B.J. Jadeja for respondent No.2 were heard.

5. Amongst other contentions learned Advocate Mr. Gondalia for the applicant has urged that the order passed by learned JMFC was in the nature of interlocutory and Sessions Judge ought not to have entertained the Revision. It is further urged that the learned Sessions Judge has observed that the possession of the tractor was a civil dispute between the parties, which according to the learned Advocate, learned Addl. Sessions Judge ought not to have observed so as to prejudice the complaint and the prosecution pending before the learned JMFC. It was further urged that the learned Magistrate has power to issue search warrant even at pre-cognizance stage of the proceedings.

6. From the rival contentions and from the record, the crucial issue which arises is whether the learned Magistrate is empowered to issue search warrant against an accused of a criminal case u/s 93 of the Cr.P.C. The facts of this case is clearly covered by a decision of the Supreme Court in the matter of STATE OF GUJARAT vs. SHYAMLAL, reported in AIR 1965 SC 1251 wherein the Supreme Court was pleased to establish that S.94 on its true construction, does not apply to an accused person under trial. The Supreme Court further observed that one of the fundamental canons of the British system of Criminal Jurisprudence and the American Jurisprudence has been that the accused should not be compelled to incriminate himself. The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because the various sections of the Criminal Procedure Code it gives effect to it. Ultimately, vide para 37 of the judgement, Supreme Court observed that no search warrant could be issued to search for documents known to be in the possession of the accused. Though it was further observed that a general search or inspection can still be ordered and, therefore, this Revision is substance less and is required to be rejected.

7. However, the purshis given by the accused vide Exh. 12 in the Revision before the Sessions Court will hold good till the disposal of the Criminal Case in question i.e. Criminal Case No. 177/97 pending before the Judicial Magistrate, First Class, Kalavad and secondly the observations of the learned Addl. Sessions Judge in his order, which is impugned, as to the dispute

regarding the possession of the tractor is a civil dispute, will not come in the way of the prosecution. Meaning thereby that the learned Judicial Magistrate, First Class, Kalavad, not be influenced by this observation of the Sessions Judge while deciding the Criminal Case No. 177/96.

8. For the reasons stated above, this Revision Application fails and is dismissed. Rule discharged.

(J.R. Vora, J.)

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